



August 21, 2000

Ms. Judith A. Hunter
Paralegal
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR2000-3187

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138335.

The City of Georgetown (the "city") received a written request for "all documents to include the application to lease property for the purpose of construction of a hanger for ADYL Aviation." You state that the city will make some responsive records available to the requestor. You contend, however, that certain other records are excepted from public disclosure pursuant to the attorney-client privilege as incorporated into section 552.107(1) of the Government Code and the attorney work product privilege as incorporated into 552.111 of the Government Code.

Although you raise the attorney-client and work product privileges, you have not explained how these privileges apply to the records you submitted to this office, nor have you marked the documents to indicate the applicable exception. *See* Gov't Code § 552.301(e)(1)(A), (e)(2). For example, a large portion of the records at issue consist of handwritten notes, but you do not inform this office of the author of those notes nor of the conditions under which the notes were created. This office will not assume that records are protected under the attorney-client privilege absent the threshold demonstration that the records were created by an attorney in the furtherance of legal services to the client or that the records consist of a client confidence. *See* Open Records Decision No. 574 (1990).

Only one of the documents at issue, a "Legal Department Memorandum," is clearly labeled as coming under the attorney-client privilege. This memorandum clearly contains the city attorney's legal opinion to his client. Accordingly, this is the only document that the city may withhold pursuant to section 552.107(1) of the Government Code.

Similarly, although you contend that the records at issue consist of attorney work product, you have not demonstrated, nor is it apparent from the records at issue, that the requested information was created for trial or in anticipation of litigation under the test articulated in *National Tank v. Brotherton*, 851 S.W.2d 193 (Tex. 1993), and that the information consists of or tends to reveal an attorney's "mental processes, conclusions, and legal theories." Open Records Decision No. 647 at 5 (1996) citing *United States v. Nobles*, 422 U.S. 225, 236 (1975). Because you have not met your burden of establishing that the records at issue are protected as attorney work product, the city may not withhold any of the requested information under section 552.111.

In summary, the only document the city may withhold is the legal memorandum dated July 8, 1997. All remaining documents must be released in their entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Bialek".

Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/RWP/er

Ref: ID# 138335

Encl. Submitted documents

cc: Mr. Michael T. Sheffield
300 Sequoia Spur West
Georgetown, Texas 78628
(w/o enclosures)